

Amendment No. 2 to HB1448

Fitzhugh  
Signature of Sponsor

**AMEND Senate Bill No. 1573\***

**House Bill No. 1448**

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 17-4-101(b), is amended by deleting the subsection in its entirety.

SECTION 2. Tennessee Code Annotated, Section 17-4-102, is amended by deleting the section in its entirety and by substituting instead the following:

Section 17-4-102.

(a) There is established as a part of the judicial branch of the state a judicial selection commission. The commission shall be composed of seventeen (17) members, as follows:

(1) Eight (8) members shall be appointed by the speaker of the senate, as follows:

(A) Two (2) of such members shall be appointed from each of the state's three (3) grand divisions, and the remaining two (2) members shall be appointed at-large;

(B) At least six (6) of the members shall be lawyers, and at least one (1) of the members appointed at-large shall be a non-lawyer; and

(2) Eight (8) members shall be appointed by the speaker of the house of representatives, as follows:

(A) Two (2) of such members shall be appointed from each of the state's three (3) grand divisions, and the remaining two (2) members shall be appointed at-large;

(B) At least six (6) of the members shall be lawyers, and at least one (1) of the members appointed at-large shall be a non-lawyer; and

(3) One (1) member shall be jointly appointed at-large by the speaker of the senate and the speaker of the house of representatives, and such member shall be a non-lawyer.

(b) In making appointments to the commission, each speaker shall do so with a conscious intention of selecting a body that reflects a diverse mixture with respect to race, including the dominant ethnic minority population of this state, and gender.

(c) Effective September 1, 2009, the entire membership of the commission is hereby vacated and shall be replaced by new appointments made pursuant to this act. To stagger the terms of the newly appointed commission members, four (4) of the senate speaker's appointments shall be made for initial terms of two (2) years each, four (4) of the house speaker's appointments shall be made for initial terms of two (2) years each, and the speakers' joint appointment shall be made for an initial term of two (2) years. The remaining eight (8) appointments shall be made for initial terms of four (4) years each. Thereafter, the terms for all appointments shall be prescribed by §§ 17-4-106 and 17-4-107.

(d) In making lawyer appointments to the commission, each speaker shall receive, but shall not be bound by or restricted to, recommendations submitted by any interested bar group, including but not limited to the Tennessee bar association, the Tennessee association for justice, the Tennessee defense lawyers association, the Tennessee association of criminal defense lawyers, the Tennessee district attorney generals conference, the Tennessee public defenders conference, the

Tennessee lawyers association for women, and the Tennessee alliance for black lawyers.

SECTION 3. Tennessee Code Annotated, Section 17-4-103, is amended by deleting the section in its entirety and by substituting instead the following:

Section 17-4-103.

(a) Each member of the judicial selection commission shall be a citizen of the United States, shall be at least thirty (30 ) years of age, and shall have been a citizen of this state for at least five (5) years immediately prior to appointment. Any member appointed from one (1) of the state's grand divisions shall have been a resident of that grand division for at least one (1) year immediately prior to appointment.

(b) Each lawyer member shall be a lawyer in good standing who is licensed to practice by the Tennessee supreme court.

SECTION 4. Tennessee Code Annotated, Section 17-4-104, is amended by adding the following language as a new, appropriately designated subsection:

(c) No member of the judicial selection commission shall be a lobbyist registered in this state. Any member of the commission becoming a registered lobbyist in this state ipso facto vacates the member's office as a member of the commission.

SECTION 5. Tennessee Code Annotated, Section 17-4-105, is amended by deleting the language "September 1, 1994" wherever it appears and by substituting instead the following:

September 1, 2009

SECTION 6. Tennessee Code Annotated, Section 17-4-106, is amended by deleting the section and by substituting instead the following:

Section 17-4-106.

(a) Except as otherwise provided in § 17-4-102(c) or § 17-4-107(a), the term of a commission member shall be four (4) years.

(b) A commission member shall be eligible for reappointment; however, no commission member shall serve more than two (2) terms, including any initial, partial or regular term.

SECTION 7. Tennessee Code Annotated, Section 17-4-107, is amended by designating the current language as subsection “(a)” and by adding the following new language, to be designated as subsection “(b)”:

(b) Any member of the judicial selection commission, who misses four (4) meetings of the commission during the member’s term of office, ipso facto vacates the member’s office as a member of the commission.

SECTION 8. Tennessee Code Annotated, Section 17-4-109(d), is amended by deleting the subsection in its entirety and substituting instead the following:

(d) After one (1) public hearing, the commission may hold such additional public meetings as it deems necessary. In addition, the commission may conduct private interviews with possible nominees pursuant to § 17-4-109(g)(2). The commission shall make independent investigation and inquiry to determine the qualifications of possible nominees for the judicial vacancy and shall endeavor to encourage qualified attorneys to accept a nomination and agree to serve if appointed to the judicial vacancy.

SECTION 9. Tennessee Code Annotated, Section 17-4-109(e), is amended by deleting the subsection in its entirety and by substituting instead the following:

(e)

(1) As soon as practicable and not later than sixty (60) days from receipt of written notice from the governor that a vacancy has occurred, the commission, in public meeting, by a majority vote, shall select three (3) persons whom the commission deems best qualified and available to fill the vacancy and shall certify the names of the three (3) persons to the governor as nominees for the judicial vacancy. When selecting nominees

in such public meeting, commission members shall vote anonymously by written ballots.

(2) If an incumbent judge fails to file a written declaration of candidacy as required by § 17-4-114 or § 17-4-115, or if the commission is reliably informed that a vacancy is impending for another reason, then the commission may meet, select such persons and certify the names of such nominees to the governor prior to the actual receipt of written notice from the governor that a vacancy has occurred.

SECTION 10. Tennessee Code Annotated, Section 17-4-109, is amended by adding the following language as a new subsection (g):

(g)

(1) The commission shall be deemed to be a governing body pursuant to § 8-44-102 and all meetings of the commission shall be open to the public and shall be conducted in accordance with the provisions of title 8, chapter 44, part 1.

(2) Notwithstanding the provisions of subdivision (1) above, the commission shall have the authority to meet as a body to conduct private interviews with possible nominees. These private interviews shall be limited to discussion between commission members and possible nominees and at no time shall the commission deliberate toward a decision in these private interviews. Furthermore, notwithstanding the provisions of subdivision (1) above, the commission shall have the authority to vote anonymously as detailed in subsection (e)(1).

SECTION 11. Tennessee Code Annotated, Section 17-4-112, is amended by deleting the section in its entirety and by substituting instead the following:

(a)

(1) When a vacancy occurs in the office of an appellate court after July 1, 2009, by death, resignation or otherwise, the governor may fill the

vacancy by appointing one (1) of the three (3) persons nominated by the judicial selection commission, or the governor may require the commission to submit one (1) other panel of three (3) nominees. Upon receiving the additional panel of nominees, the governor shall fill the vacancy by appointing one (1) of the six (6) nominees certified by the commission.

(2) Upon receiving the commission's panel or panels of nominees but prior to making the appointment pursuant to subdivision (a)(1), the governor shall direct the Tennessee bureau of investigation or other appropriate agencies to perform appropriate financial and criminal background investigations and inquiries of the nominees, and the governor shall review and assess the results thereof.

(b) The term of a judge appointed under this section shall expire on August 31 after the next regular August election occurring more than thirty (30) days after the vacancy occurs.

SECTION 12. Tennessee Code Annotated, Section 17-4-201, is amended by deleting subsection (b) in its entirety and substituting instead:

(b)

(1) The judicial evaluation commission shall be composed of nine (9) members.

(2) The judicial council shall appoint five (5) of the members, of whom three (3) shall be state court judges, one shall be a lawyer and one (1) shall be a nonlawyer. No more than two (2) of those appointed shall reside in the same grand division.

(3) The speaker of the senate shall appoint one (1) lawyer and one (1) nonlawyer member. No more than one (1) of those appointed shall reside in the same grand division.

(4) The speaker of the house of representatives shall appoint one (1) lawyer and one (1) nonlawyer member. No more than one (1) of those appointed shall reside in the same grand division.

(5) The supreme court's evaluation procedure may permit the judicial evaluation commission to perform an evaluation with less than the full membership in panels, but the full commission shall approve the evaluation.

(6) The appointing authorities for the judicial performance evaluation commission shall make appointments that approximate the population of the state with respect to race and gender. In making lawyer appointments to the commission, the speaker shall receive, but shall not be bound by, recommendations from any interested bar group including but not limited to the Tennessee bar association, the Tennessee association for justice, the Tennessee defense lawyers association, the Tennessee association for criminal defense lawyers, the Tennessee district attorney generals conference, the Tennessee public defenders conference, the Tennessee lawyers association for women, and the Tennessee alliance for black lawyers.

(7) To stagger the terms of judicial evaluation commission members, beginning September 1, 2009, the three (3) nonlawyer members on the commission shall serve six (6) year transition terms; the three (3) state court judges on the commission shall serve four (4) year transition terms; and the three (3) lawyer members on the commission shall serve two (2) year transition terms. At the conclusion of the transition terms, each regular term of a commission member shall be six (6) years. A vacancy on the commission shall be filled in the same manner as the original appointment for the remainder of the unexpired term.

(8) No commission member shall serve more than two (2) terms.

(9) A member of the judicial evaluation commission is not eligible to seek an appellate judgeship that becomes available as a result of, or related to, the commission's recommendation against retention for an incumbent appellate judge as set out in subsection (a).

SECTION 13. Tennessee Code Annotated, Section 4-29-229(a), is amended by deleting subdivisions (46) and (47).

SECTION 14. Tennessee Code Annotated, Section 4-29-234(a) is amended by adding the following new appropriately designated subdivisions thereto:

(\_) Judicial Selection Commission created by Section 17-4-102

(\_) Judicial Evaluation Commission created by Section 17-4-201

SECTION 15. Sections 13 and 14 of this act shall take effect upon becoming a law, the public welfare requiring it; and the remaining provisions of this act shall take effect on September 1, 2009, the public welfare requiring it.